

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-508V

Filed: November 7, 2011

TRINA EICHORN,)	
)	NOT TO BE PUBLISHED
Petitioner,)	
)	
v.)	Stipulation; influenza (flu) vaccine;
)	Guillain-Barre Syndrome (GBS);
SECRETARY OF)	polyneuropathy, encephalopathy;
HEALTH AND HUMAN SERVICES,)	Acute Respiratory Distress Syndrome
)	(ARDS)
Respondent.)	
)	

Michael G. McLaren, Black & McLaren, Memphis, T.N., for Petitioner;
Melonie J. McCall, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Special Master.

On November 3, 2011, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Trina Eichorn, alleges that she suffered injuries related to her receipt of the trivalent influenza ("flu") vaccine on November 4, 2005, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Specifically, Ms. Eichorn alleges that she experienced Acute Respiratory Distress Syndrome ("ARDS"), polyneuropathy, encephalopathy with multi-organ failure, and Guillain-Barre Syndrome ("GBS"). Petitioner further alleges that she experienced the effects of these injuries for more than six months. Petitioner seeks compensation related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that Ms. Eichorn suffered ARDS, polyneuropathy, encephalopathy with multi-organ failure, GBS, or any other injury that was caused by her flu vaccination. Respondent further denies that Ms. Eichorn experienced the residual effects of any alleged vaccine-related injuries for more than six months. Nonetheless, the parties have agreed informally to resolve this matter.

¹ In accordance with Vaccine Rule 18(b), petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Redactions ordered by the special master, if any, will appear in the document as posted on the United States Court of Federal Claims' website.

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

- a. **A lump sum of \$112,500.00, in the form of a check payable to Petitioner,** which amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and
- b. **A lump sum of \$10,000.00 in the form of a check payable to Petitioner and Petitioner's attorney, Michael G. McLaren, Esq.,** for attorneys' fees and costs, available under 42 U.S.C. § 300aa-15(e). In compliance with General Order #9, Petitioner represents that all litigation costs were paid by her attorney and that she did not personally incur any costs in proceeding on the petition.

The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Dee Lord
Dee Lord
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

_____)	
TRINA EICHORN,)	
)	
Petitioner,)	
)	
v.)	No. 07-508V
)	Special Master Lord
SECRETARY OF HEALTH AND HUMAN)	ECF
SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Trina Eichorn, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received the flu vaccination on November 4, 2005.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she experienced Acute Respiratory Distress Syndrome ("ARDS"), polyneuropathy, encephalopathy with multi-organ failure, and Guillain-Barre Syndrome ("GBS") as the result of the flu vaccination. She further alleges that she experienced the effects from these injuries for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.

6. Respondent denies that petitioner suffered ARDS, polyneuropathy, encephalopathy with multi-organ failure, GBS, or any other injury that was caused by her flu vaccination. Respondent further denies that petitioner experienced the residual effects of any alleged vaccine-related injuries for more than six months.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$112,500.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and
- b. A lump sum of \$10,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Michael G. McLaren, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

10. Payments made pursuant to paragraph 8 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions, or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on November 4, 2005 as alleged by petitioner in a petition for vaccine compensation filed on or about July 6, 2007, in the United States Court of Federal Claims as petition No. 07-508V.

13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties'

settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner to suffer any injuries, including ARDS, polyneuropathy, encephalopathy with multi-organ failure, or GBS, or that petitioner experienced the residual effects of these injuries for more than six months.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns.

END OF STIPULATION

/

/

Respectfully submitted,

PETITIONER:



TRINA EICHORN

**ATTORNEY OF RECORD
FOR PETITIONER:**



MICHAEL G. McLAREN, ESQ.
Black, McLaren, Jones, Ryland, & Griffee, P.C.
530 Oak Court Drive
Suite 360
Memphis, TN 38117
(901) 762-0535

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**



VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

**AUTHORIZED REPRESENTATIVE OF
THE SECRETARY OF HEALTH AND
HUMAN SERVICES:**



GEOFFREY EVANS, M.D.
Director, Division of
Vaccine Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**



MELONIE J. McCALL
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 616-4098

Dated 11/3/11